# UNITED STATES SUPREME COURT.

No. 782.

THE STATE Ex Rel. THE CITIZENS' BANK OF LOUISIANA, Plaintiff in Error,

*versus*

THE BOARD OF LIQUIDATION STATE OF LOUISIANA, Defendant in Error.

*October Term of* 1876.

## BRIEF OF DEFENDANT IN ERROR.

### STATEMENT OF CASE.

I.

The plaintiff in error, owner of sixty (60) second mortgage bonds of the New Orleans, Mobile and Chattanooga (Texas) Railroad Company, of one thousand dollars each, having on their backs a guarantee of payment by the State of Louisiana, applied to the Board of Commission-

ers of the funded debt, created by Act No. 3 of the Session Acts of 1874, to have the same funded, and to receive in exchange the new consolidated bonds to be issued under said act.

This application was refused by the Funding Board: whereupon, the plaintiff in error applied for a mandamus against the Board, to compel the funding of the bonds in question.

Record, pages 1 and 2.

II.

The attorney general appeared on behalf of the Board of Liquidation and in the name of the State, and objected to making the mandamus peremptory, on the grounds, substantially:

1st. That the guarantee was absolutely null and void *ab initio*, being given "after the adoption of the constitutional amendment limiting the State debt to $25,000,000," that limit having, at the time, been exceeded.

2d. That Act 26 of 1869, authorizing the guarantee, imposed certain conditions precedent to the guarantee, and that in case of failure of compliance with said conditions or any of them, "the obligation of the State was to cease and determine." That the third of said conditions was to have been complied with on or before 18th January, 1871, that said condition had not been complied with on that day; and that therefore, "the obliga-

tion of the State to guarantee said second mortgage bonds ceased and determined, * * * and any guarantee after said lapse was without authority of law and, *ab initio*, illegal, null and void." etc.

Record, page 5.

3d. That the bonds presented "are not included among the obligations permitted to be funded by Act No. 3 of 1874, and are not the bonds of the State."

Record, page 10.

These objections were controverted by the plaintiff, who also contended, in argument, that the relator was an innocent third holder for valuable consideration, and as such unaffected by any failure of the original consideration. Record, *passim*

III.

These objections were sustained by the Court of the first instance, and the mandamus, for the reasons found in the Record, was refused.

See Record, pages 28 to 35.

The plaintiff in error appealed to the State Supreme Court, where the judgment of the lower Court was affirmed, the reasoning of the lower Court being sustained.

Record, pages 42 to 47.

Whereupon, the cause was removed, by writ of error, to this Court, on the ground of a violation of sec. 10, art.

1 of the Constitution of the United States; namely, that "no State shall * * * pass any * * * law impairing the obligation of contracts."

Record, page 52.

## The Argument.

### I.

There is no allusion to the Constitution of the United States in the pleadings or in the reasons for judgment, by the Court, of the first instance, or by the Supreme Court. No Federal question was raised or passed upon. There is no such question in the case. The case should therefore be dismissed.

Murdock vs. City of Memphis, 20 Wall. 590.

The plaintiff claims to have his bonds (issued and guaranteed under Act 26 of 1869) funded under Act No. 3 of 1874 Neither party called in question the validity of those acts; both asserted their validity.

The question in the case, as to the latter act (No. 3 of 1874) was, whether the bonds in question were embraced by it—a simple interpretation of the statute. That *interpretation* was against the pretensions of the plaintiff.

The question as to the former act (No. 26 of 1869) was, were the bonds properly issued and guaranteed under the provisions of that act. Both Courts held, that the conditions precedent had failed, and the right in the Railroad Company to demand the State guarantee had lapsed, and

that consequently, the power of the Governor to give the guarantee had ceased and determined.

The reasoning and rulings of the Courts were solely as to the extent of the legislative grant, in the act—an interpretation of its provisions.

There is no pretense that the State has passed any law impairing the obligation of any contract which may have been made by or under either statute.

The entire reasoning of the Supreme Court of Louisiana, was to the question of fact, namely, whether the obligation of the State to guarantee these bonds had *ceased and determined* on the 18th January, 1871, or not. They found the affirmative, and then say, that on and after that day, there being no subsisting obligation of the State to guarantee, and the constitutional limitation of the State debt having supervened, neither the Governor nor the Legislature could thereafter revive a lapsed obligation.

See opinion of Mr. Justice Wyly, Rec., pages 43 to 46.

Even in the dissenting opinion of Chief Justice Ludeling, the constitutional question is not noticed.

The Federal question was not invoked, nor does it appear in the case. Only the question—was there a subsisting obligation, under act 26 of 1869, when the bonds were guaranteed?

II.

On the merits, should the Court take jurisdiction, the opinion of the Court of the first instance,

Record, pages 28 to 35,

and of the Supreme Court of Louisiana,

Record, pages 42 to 47

are referred to, as a full argument of the case.

The brief prepared for the Supreme Court of Louisiana, in behalf of the Board of Liquidation, is annexed.

III.

The 12th section of act of 1869, affixed certain conditions to the obligation to guarantee, upon failure of which, "the obligation of the State * * * to guarantee the second mortgage bonds of said company," *ceased and determined*.

One of these conditions was, that "a section of at least forty miles should be constructed and the rails laid thereon," within a certain time, which expired, by statute, at the longest period possible, on the 17th January, 1871.

The proof is, that this section was not completed until long after, and no second section has ever been completed.

Testimony of Dodge, Record, pages 27, 28.

The power of the Governor to guarantee ceased on the 17th January, 1871. His guarantee, then, in April, was absolutely null and void, being without authority. Being

void *ab initio*, third holders, however innocent, take nothing by their purchases.

Diamond vs. Lawrence Co., 37 Pa. State, 353.
Aspinwall et als. vs. The Commissioners, 22 How. 365.
The State vs. Town of Geneva, 22 N. Y. 440.
Floyd's Acceptances, 7 Wall. 666.

IV

The people of Louisiana, on November 7th, 1870, approved an amendment to its constitution, limiting the State debt to $25,000,000. Of this constitutional provision, the world must take notice. No power existed in or could be given to the Governor to add to the debt of the State after that date. The limit had already been exceeded.

State ex rel. Solomon & Simpson vs. Graham, 23 La. Ann. 402.

V

Even if, in spite of that amendment, there was a subsisting contingent obligation on the part of the State to guarantee these bonds, yet that obligation "ceased and determined" on the 17th January, 1871.

On that day, by the failure of the railroad company to have completed the first section of forty miles, all power in the Governor to bind the State by the guarantee of these bonds ceased and determined. The grant lapsed; this the bondholders knew, for their bond contained the law. It required only a counting of dates. The act was

approved February 18, 1869; the ninety days for acceptance expired May 17; the eight months to complete the survey and location, ended January 17, 1870; and the one year within which to complete the first section of forty miles, expired with the 17th of January, 1871.

The proof is, the first section was not completed on the 1st day of April, 1871. The certificate of VanVleck is April 5.

The grant had therefore lapsed; the obligation of the State had ceased and determined; there was no power in the Governor to bind the State.

When the certificate of the engineer was made, on the 5th of April, 1871, there was no subsisting obligation on the part of the State in favor of the New Orleans, Mobile and Texas Railroad Co. whatever.

There being no power in the Executive to guarantee the bonds, the question of *bona fides* cannot arise. There can be no claim on a bond without a legal existence.

VI.

In section 3 of act No. 3 of 1874, (The Funding Act,) it is provided, that "when so prepared, said bonds (the new consolidated bonds) shall be exchanged by the Board of Liquidation for *all valid outstanding bonds of the State*, and all valid warrants, drawn previous to the passage of this act," etc.

And, in section 8 of same act, it is provided "that the

bonds and valid warrants outstanding at the time of the passage of this act shall, as fast as they are received, in exchange for consolidated bonds, be cancelled and destroyed by the said Board of Liquidation."

The bonds in question were not the bonds of the State, but were the second mortgage bonds of the New Orleans, Mobile and Texas Railroad Company. The State, if liable at all, was liable as endorser or guarantor. They are not of the description of the obligations described in the third section, quoted above.

Again, if these bonds should be taken up in exchange for the new consols, they would be a debt of the railroad company to the State; yet the Board of Liquidation, by the 8th section, are compelled to cancel and destroy the evidence of indebtedness, of the railroad company, to the State.

This indicates that the Legislature did not intend that these obligations were to be considered as included among the "valid outstanding bonds of the State" to be funded.

## VII.

In all these questions, the interpretation of the several statutes only is involved; not the passage of a law impairing the obligations of any contract created by or under them.

The claim is, that the plaintiff has a valid contract under these statutes, and that the courts of the State has

impaired the obligation of such contract by declaring that the contract itself is invalid—that is, has interpreted its own statutes adversely to the pretensions of the plaintiff, under the facts found by them.

In such a case, this Court is without jurisdiction.

Worthy vs. The Commissioners. 9 Wall. 611.

The N. Y. Life Ins. Co. vs Herndon.

Respectfully submitted.

J. Q. A. FELLOWS,

*Attorney for Defendant in Error.*

# Supreme Court of Louisiana.

## THE CITIZENS' BANK OF NEW ORLEANS,

VS.

## THE FUNDING BOARD.

*Appeal from the Superior District Court, parish of Orleans.*

The plaintiff as holder and owner of sixty bonds of one thousand dollars each, known as the second mortgage bonds of the New Orleans, Mobile and Chattanooga Railroad Company, authorized to be issued under act No. 26, of 1869, by the Legislature of Louisiana, having applied to the board for funding the State debt under act No. 3, of 1874, and the funding of the bonds having been refused, brought this suit by way of mandamus against the said board to compel the funding of the bonds, and prayed that the mandamus be made peremtory. The plaintiff set up that it became the owner of the bonds by purchase in market overt in New York in 1872, and adduced proof that it had paid thirty-five thousand dollars for the sixty bonds; that as shown by the bonds, the Governor of the State under the provisions of the act, had signed a certificate on the back of the bonds and as permitted by said act had given the guarantee of the State that it would pay the principal and interest of the bonds in case of the failure of the railroad company to do

so. Proof was administered that the railroad company was insolvent. It was further set up that by the tenth section of the act, the guarantee of the Governor made full proof that all the conditions of the act of the Legislature, (act No. 26, of 1869) had been fully complied with.

The defense set up by the Attorney General was, that these bonds were not the bonds of the State, and therefore not fundable under act No. 3 of 1874; that the conditions of the act No. 26 of 1869, to be peformed on the part of the company, in order to obligate the State to guarantee the payment of the bonds, had not been complied with; and that therefore the obligation of the State to give this guarantee had, in the words of the act, ceased and determined, and this before the guarantee had or could have been given; that among the conditions were that a section of forty miles should be completed within a specified time, and the whole road within a certain other specified time, and that the bonds were to be guaranteed, only as each section of forty miles was completed; that the first section of forty miles was to have been completed on or before January 18, 1871; the whole road to the Sabine by January 18, 1873, and to Houston, Texas, by July 18, 1873; that the first section was not completed until May (April), 1871, and that no second section of forty miles was yet completed; that the obligation of the State to guarantee the payment of the bonds had ceased and determined on January 18, 1871, and the amendment to the constitution limiting the State debt to $25,000,000, adopted by vote of the people, November 7, 1870,

had supervened, and the further increase of the debt or obligation of the State was prohibited, the constitutional limit of the State debt having already been exceeded; that the guarantee of the payment of these bonds, after the obligation to do so had ceased and determined, was the creation of a new debt, and being in violation of the constitution, the act of the Governor was null and was beyond his power.

On these pleadings, in substance, the case went to trial. The plaintiff, by a production of the bonds, the testimony of Mr. Gaines, president of the bank, and the admissions in the record, proved the allegations of fact in the petition. The defendant offered the certificate of G. W. R. Baily, assistant engineer, which, if admissible at all, was taken as full proof of what it contained. This certificate was fully corroborated by the witness Dodge, who was a contractor on the road. The certificate of the engineer is as follows:

"The following are the dates of the completion of the New Orleans, Mobile and Texas Railroad Company west from Westwego, opposite Greenville, taken from my letter press copies of my estimates in favor of the tracklaying contractors.

"January 1, 1871—4$\frac{2}{3}$ miles track laid west from Westwego.

"February 1, 1871—14$\frac{3}{4}$ miles track laid west from Westwego.

"March 1, 1871—26 $\frac{44}{100}$ miles track laid west from Westwego.

"April 1, 1871—39 $\frac{15}{100}$ miles track laid west from Westwego.

"April 5, 1871—certificate given to Governor H. C. Warmoth, that forty continuous miles of track of the main line of the New Orleans, Mobile and Texas Railroad, commencing on the right bank of the Mississippi river, opposite New Orleans, and thence extending westward, are completed and trains are now running thereon.'

(Signed) HENRY VAN VLECK,
Chief Engineer.

"May 1, 1871—49$\frac{2}{3}$ miles track laid from Westwego.

May 31, 1871—56 $\frac{97}{100}$ miles track laid from Westwego.

"The 56 $\frac{97}{100}$ miles of main line, to the Bayou Lafourche, at Donaldsonville, were completed on or about the seventeenth of May, 1871, but the estimate, as usual, was given at the end of the month.

"In the spring of 1873, after I left the road, the track was extended ten miles west of the Bayou Lafourche, to a point on a plantation east of Bayou Goula, on or about the tenth of March, 1873, making a total distance of about 67 miles of track.

Respectfully yours,

(Signed) G. W. R. BAYLEY."

Dodge testified that the statement of the certificate was correct, that he was at the end of the track on the first of April, 1871, and the first section of forty miles was not then completed; that on the fifth of April he was there again and forty miles was then completed, and he also corroborates the other statements of the certificate; that he had seen the certificate of the chief engineer, Van Vleck, copied into

the certificate of Assistant Engineer Bayley, that the date was correct, and the substance substantially as he recollected it.

There is no dispute about the facts. The first section of forty miles was not completed on January 18, 1871, as required by act No. 26 of 1869; less than fifteen miles was completed on first of February, 1871, and the forty miles not until the fifth of April, 1871, nor was the certificate of the engineer furnished the Governor until that date.

By act No. 26, approved February 17, 1869, those representing that railroad company procured the engagement of the State of Louisiana to guarantee the payment of its second mortgage bonds to the extent of $12,500 per mile of its entire main line, from the west bank of the Mississippi river, opposite New Orleans, to Houston, Texas. This guarantee was to be given under certain conditions, among them were—

*First*—That the company was to accept the conditions of the grant within ninety days, or before May 18, 1869.

*Second*—That it was to survey and locate the railroad to Houston, Texas, within eight months of acceptance of the conditions, or before January 18, 1870.

*Third*—That it was to construct a section of forty miles within one year from the date of the survey and location of the entire line, or before January 18, 1871.

*Fourth*—To construct and lay the rails thereon to the Sabine river within three years from the date of the location, or before January 18, 1873. And

*Fifth*—To Houston, Texas, within six months thereafter, or before July 18, 1873.

On November 7, 1870, the amendment to the constitution limiting the State debt was voted on by the people and adopted; and the limit having been already reached, the State could create no new debt after November 7, 1870.

The obligations of the State, under act 26, of 1869, having been incurred prior to the constitutional amendment, were not affected by it, *per se*, nor unless the conditions of the act should not be complied with. But by the failure of any one of the conditions precedent, the State would be released from its obligation.

On the eighteenth of January, 1871, the first section of forty miles required by act 26 of 1869, to be completed and the rails laid thereon had not been completed nor the rails laid, nor was it till some two months later. See testimony of Bayley, engineer, and Dodge. The condition precedent, the third condition named, had not been complied with, and therefore, the obligation of the State to guarantee the bonds had ceased, the grant had lapsed.

There being then, after January, 18, 1871, no subsisting obligation on the part of the State to guarantee the second mortgage bonds of the Railroad Company, their guarantee by the State after that date, would be the creation of a new debt, and such guarantee would be null, by reason of the constitutional amendment.

The proof is (see testimony of Bayley) that the Road has not yet been completed to the Sabine, nor to Houston; in fact only for about sixty-seven miles in

all; although the time has elapsed for each and every section (to the Sabine, January, 18, 1873, and to Houston, Texas, July, 18, 1873), to have been completed.

One of the conditions of the grant in act No. 26, of 1869, that of building a section of forty miles before January, 18, 1871, had not been complied with. There was then no subsisting obligation on the part of the State to guarantee the second mortgage bonds of the road after January, 18, 1871, and the constitutional amendment limiting the State debt having in the meantime intervened, the Legislature could not create a new debt.

Being void *ab initio*, the Legislature being without power to authorize their issue, or to add to the State debt, the bonds are worthless in the hands of third holders, however innocent they may have been in their purchase. The bonds never having had any legal validity, are worthless in whose hands soever they may be found.

But a reference to the act is on the back of the bonds, and forms, therefore, a part of the conditions of the bonds, and must give full notice to the holder.

The terms of the act referred to in the bond as a part thereof was a full notice to all holders. The company was

*First*—To complete a section of forty miles, west from New Orleans, as per act No. 26 of 1869, before January 18, 1871.

*Second*—To complete the entire main road from New Orleans to the Sabine river, before January 18, 1873.

*Third*—To complete the railroad to Houston, Texas, as per the same act, before July 18, 1873.

Innocent third holders can not claim want of notice. They saw on their bonds that they were issued by virtue of an act approved February 17, 1869, with all the foregoing conditions necessary to their validity attached.

They then did have notice that the bonds had been illegally issued. They were not and can not be innocent third holders. The very bonds themselves put the purchasers on their guard. The authorities therefore as to innocent third holders, before maturity, do not apply. The bonds are issued by the railroad company.

This case is stated to be similar to that of the North Louisiana and Texas Railroad Company case. This is not so.

In that case the State was under obligations to issue its own bonds on the completion of every five miles of road, to the extent of $6000 per mile. In this case it was to guarantee the payment of the second mortgage bonds of the company issued by itself.

In that case there was, after the completion of the first section of six miles, no limit as to the time for the completion of the road, or any section of six miles of the road.

In this case there were several limitations as to time, the failure to comply with any one of which was fatal to the entire grant, and released the State from any obligation to the company—not as to one, but as to every condition of limitation as to time, was there a failure to comply with the conditions.

In that case there was a subsisting obligation on the part of the State, not subject to the constitutional amendment limiting the State debt.

In this case, by failure of the conditions precedent, the constitutional amendment intervened, and the obligations of the State to the company having ceased, the constitutional amendment prohibited the revival of the previous subsisting obligation of the State.

There is no such similarity in the case of the North Louisiana and Texas Railroad Company as to warrant its citation as a precedent or authority in this case.

It may be said that joint resolution No. 94, approved April 18, 1871, changed the size of the sections to be completed as to the condition precedent for the guarantee of the second mortgage bonds of the railroad company, from forty miles to ten miles, and that therefore the condition for the completion of the first forty miles was changed.

This is not good, for

*First*—There is nothing in the object of act 94 of 1871, as expressed in its title, to authorize such a change, and

*Second*—If there were, the condition of the completion of the first forty miles not having been complied with in time, there was a lapse on January 18, 1871, just three months before the passage of joint resolution No. 94 of 1871.

There was then no subsisting obligation of the State to be changed on the eighteenth of April, 1871, and the obligation of the State could not be revived by reason of the limitation of the State debt by the constitutional amendment.

That act, or joint resolution, (No. 94), of 1871, can not therefore be made available in this case.

In regard to innocent third holders: they took the bonds, with the act authorizing their issue, named on the face of the bonds, and this act gave all the information as to the conditions necessary for their issue which have heretofore been given. They were not therefore such innocent third holders as will be relieved from such equities and nullities as exist against the railroad company.

In Diamond vs. Lawrence county, 37 Pa. State 353, the court held that "all purchasers of such bonds (bonds issued by counties under authority of an act of the State Legislature) are bound to take notice of the law under which they are issued. Even in the hands of innocent and remote purchasers, they are subject to the equities existing against them when in the hands of the first purchasers from the company."

In Aspinwall et als. vs. The Commissioners of the county of Daviess, 22 How. U. S. Reports, p. 365, in a case where a constitutional amendment had intervened between a vote of the taxpayers of a county under authority of an act of the Legislature, authorizing a subscription to the stock of a railroad company passing through the county, and the issue of the bonds, by which amendments the counties were prohibited from subscribing for such stock or issuing bonds therefor, it was held that "the bonds were issued in violation of the constitutional amendment (of Indiana) and are therefore void."

In the case of the State vs. the town of Genoa, 23 N. Y. p. 440, it was held that "one who purchased the bonds from the railroad company at a discount, with the knowledge that the corporation had received

them in direct exchange for stock, though he be a *bona fide* holder, takes the bonds subject to any defense existing against them. The plaintiff is bound to prove affirmatively that the written assent of the requisite number of resident taxpayers was in point of fact obtained and filed in the county clerk's office, as required by the statute. The town is not bound by the representation of its officers, upon the face of the bond, that such assent had been obtained and filed; such a representation is of a fact which goes to the constitution of the agency, and which is of no effect as against the alleged principal."

In the Floyd Acceptances, 7 Wall. 666, (675–681), the above doctrine was applied in a case of the government of the United States, and the doctrine as quoted in the above cases as applied to municipal corporations, was enunciated to its fullest extent. The syllabus in the foregoing decisions is quoted from and the text is referred to, especially of the latter case.

A third holder must look to the facts which were conditions precedent to the issue of the bonds and see that they had transpired, because the very right of of the Governor (or Treasurer) to issue the bonds depended upon the happening, the fulfilling of the conditions, and these formed or entered into the power of agency of the Governor to issue the bonds, or as said in 23 N. Y., "goes to the constitution of the agency," and must be noticed by the third holder.

It is contended that under the tenth section of act 26 of 1869, the certificate of the Governor guaranteeing the payment of the bonds is full proof that all

the conditions of the act have been complied with. However correct this might be, prior to the lapsing of the right of the company to enforce the guarantee, and this is by no means admitted, but denied to be good law, yet after the obligation of the State had ceased and determined by failure to complete the first section of forty miles before the eighteenth of January, 1871, the Governor of the State was without authority to give any guarantee whatever. His power had ceased and determined. What before might have been the act of the State, through its mandatary, the Governor, became the act of the person occupying the gubernatorial chair, without any power to bind the State in the premises. But no Legislature can give such power to any officer as will enable him to bind the State in absolute wrong, and with no benefit to the State whatever. The doctrine contended for would make the act of the Governor binding beyond the power of rebuttal by proof, had he guaranteed these bonds without a certificate of *completion*, without a commencement of work, without a survey or location of the route, without even the acceptance of the terms of the act by the corporation. The certificate of the Governor, guaranteeing the bonds, is only as to the completeness of the work, not that work is completed which has never been done; goes to the satisfactoriness of the certificate furnished, and does not apply where no certificate at all has been furnished.

But there seems to be a further popular mistake attending these second mortgage bonds. It is supposed that the railroad company could under act No. 26 of 1869, issue its second mortgage bonds to the ex-

tent of $12,500 per mile, for its whole contemplated distance, and have them guaranteed as to their payment by the State, as sections of forty miles were completed, even a cursory reading of the statute conclusively negatives this idea. The railroad company was authorized to create a second mortgage on its road for the entire length. When the act of mortgage (the notarial act) was completed, it was to be recorded after approval by the Governor. When forty miles were completed it could prepare bonds, such as described in act 26, of 1869, to the extent of $12,500 per mile, or $500,000 for sections of forty miles, present them to the Governor, with the Engineers certificate of completion, secure the guarantee of the Governor for their payment, by the State *and it could then issue the bonds and then only*; and so on as each and every section of the forty miles should be completed. This was subject to the condition of the construction of the first section before January 18, 1871, and in order, as the title of the act sets forth, "to expedite the construction of the railroad etc."

A perusal of the act will show this. The result is that on failure to complete the first section of forty miles in time, the right was lost even to the company to issue any second mortgage bonds. The object of act No. 26 of 1869, had failed. If the right to issue had lapsed, the obligation of the State to guarantee had certainly ceased and determined.

It is respectfully submitted that there should be judgment for defendant as prayed for.

A. P. FIELD,
Attorney General.

J. Q. A. FELLOWS,
J. B. COTTON,
Of Counsel.

# United States Supreme Court.

*No. 215.*

THE STATE EX REL. CITIZENS' BANK OF LOUISIANA, PLAINTIFF IN ERROR,

*vs.*

THE BOARD OF LIQUIDATION AND THE STATE OF LOUISIANA.

*Supplemental Brief of Defendant.*

I.

There is no question as to the validity of acts No. 26 of 1869 and No. 3 of 1874. The questions are, as to their interpretation and effect.

1.—As to act 3 of 1874 (The Funding act):—Do the words "valid outstanding *bonds of the State*," in sect. 3, include the bonds of the R. R. Co. guaranteed by the State? It is a question of interpretation merely, and that interpretation was against the pretentions of the plaintiff.

The plaintiff asked that the Funding Board be compelled to fund its bonds, as state bonds. The courts of Louisiana held that these were not *bonds* of

the State and that therefore the Board could not be compelled to fund them.

No Federal question was involved or decided under this head, and this decided the whole case.

2.—As to act 26 of 1869:—the question was, Did the bonds, issued under that act, constitute a valid *obligation* of the State?

Counsel for the defendant nowhere contend, and never have contended, that the State could violate or repudiate its contracts. The question was as to the authority of the Governor to guarantee the payment of the bonds.

Counsel for the defendant contended that his power under the act to guarantee, ceased on Jan'y 17, 1871—that the obligation of the State to guarantee, "ceased and determined" on that day: that the certificate of guarantee by the Governor was and could be, no act of the State.

The certificate of the Chief Engineer (Van Vleck) given to Governor H. C. Warmoth, on April 5, 1871, that the forty miles of track were completed, was for the purpose of authorizing the signing of the certificate of guarantee—and then (April 5, 1871,) the guarantee was given—neither the certificate nor the guarantee of the bonds could have been given prior thereto, for forty miles of the road had not been completed.

3.—The obligation of the State ceased and determined on January 17, 1871—not by any act of the Legislature, nor by any constitutional amendment, subsequent to act No. 26 of 1869—but by failure of the R. R. Co. to comply with the conditions of the grant named in the act itself. No law of the State is

set up, by which any subsisting obligation is impaired or affected. There is here, then, no Federal question, and only the interpretation of the act of 1869.

II.

But incidentally, all through the case, and the argument of the plaintiff, runs the idea, that the failure of the R. R. Co. in completing its first section of 40 miles within the time stipulated as a condition precedent, was condoned by the guarantee and subsequent completion, *or by subsequent legislation.*

It was to meet the effect of such subsequent legislation that the constitutional amendment of Nov., 1870, was invoked.

1.—If the obligation of the State to guarantee the bonds had lapsed on the 17th Jan'y, 1871—subsequent legislation, reviving that obligation, would be the creation of a new debt. This could not be done in view of the constitutional amendment limiting that debt to $25,000,000, and of the fact that the debt already exceded the limit, judicially determined.

State Ex. Rel. Solomon & Simpson. 23 La. Ann. 402.

The constitutional amendment was adduced against supposed subsequent legislation and it therefore was not an act "impairing the obligation of contracts" created by such legislation, but such legislation was in violation of that constitutional amendment.

2.—If the legislature could not create a new debt by the revival of a lapsed obligation, much less could the Governor, by any act of his, under color of a lapsed grant of power.

It was to this end that the constitutional amend-